

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 46 OF 2015

Dated: 04th July, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

IN THE MATTER OF

NTPC Limited

NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003

..... Appellant/Petitioner

VERSUS

- 1. West Bengal State Electricity Distribution Company Limited**
Vidyut Bhawan, Block-DJ,
Sector-II, Salt Lake City, Kolkata – 700 091
- 2. Bihar State Power holding Company Limited**
Vidyut Bhawan, Bailey Road, Patna – 800 001
- 3. Jharkhand State Electricity Board,**
Engineering Building,
HEC, Dhurwa, Ranchi – 834004
- 4. GRIDCO Limited**
24, Janpath, Bhubaneswar – 751007
- 5. Damodar Valley Corporation**
DVC Towers, VIP Road,
Kolkata-700054
- 6. Power Department**
Govt. of Sikkim, Kazi Road,
Gangtok, Sikkim-737101
- 7. Tamilnadu Generation and Distribution Company Limited**
NPKRP Maaligail, 144, Anna Salai,
Chennai – 600002
- 8. Union Territory of Puducherry**
Electricity Department,
58, Subhash Chandra Bose Salai,
Puducherry-605001

- 9. Uttar Pradesh Power Corporation Limited**
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001
- 10. Power Development Department (J&K)**
Govt. of J&K Secretariat,
Srinagar-190 009
- 11. Power Department**
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9D, Chandigarh- 160 009
- 12. Madhya Pradesh Power Trading Corporation Limited**
Shakti Bhawan, Vidyut Nagar
Jabalpur – 482008
- 13. Gujarat Urja Vikas Nigam Limited**
Sardar Patel Vidyut Bhawan
Race Course, Baroda – 390007
- 14. Electricity Department**
Administration of Daman & Diu(DD)
Daman-396 210
- 15. Electricity Department**
Administration of Dadra and Nagar Haveli (DNH)
Silvassa, via VAPI-396 230
- 16. BSES Rajdhani Power Limited**
BSES Bhawan, Nehru Place
New Delhi-110019
- 17. BSES Yamuna Power Limited**
Shakti Kiran Bldg., Karkardooma
Delhi-110092
- 18. Tata Power Delhi Distribution Company Limited**
33 KV Sub Station Bldg.
Hudson Lane, Kingsway Camp
New Delhi-110009
- 19. Maharashtra State Electricity Distribution Company Limited**
'Prakashgad', Bandra (East),
Mumbai-400051
- 20. Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi- 110001

..... Respondents

Counsel for the Appellant	...	Mr. M.G. Ramachandran Ms. Poorva Saigal Ms. Anushre Bardhan Ms. Ranjitha Ramachandran Mr. Shubam Arya
Counsel for the Respondent(s)...		Mr. Saurabh Mishra for R-1 Mr. R. B. Sharma for R-2, R-4 & R-16 Mr. S. Vallinayagam for R-7 Mr. Pradeep Misra for R-9 Mr. Alok Shankar for R-18

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by NTPC Limited (in short, the '**Appellant**'), a Government of India Undertaking, against the impugned Order, dated 12.11.2014, passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission**') in Petition No. 233/GT/2013 wherein, the Central Commission has revised the tariff applicable for the generation and supply of electricity by the Appellant from its Farakka Super Thermal Power Station, Stage I & II (1600 MW) (in short '**Farakka Station**') for the tariff period from 1.4.2009 to 31.3.2014.

2. The Appellant/NTPC Ltd. is aggrieved by the impugned order on the following aspects:

- I. Disallowance of capital expenditure incurred on raising of Ash Dyke amounting to Rs. 498.28 lakhs, as against the Rs 966.71 Lakhs claimed on the ground that the said part of the expenditure relating to stage I of the Station is covered by Special Allowance;
- II. Disallowance of the capital expenditure incurred on extension of Plant Boundary amounting to Rs 13.31 Lakhs on the ground that the necessary justifications have not been given and that the expenditure is covered under the Compensation Allowance under Regulation 19(e) of the Tariff Regulations, 2009; and

III. Non consideration of the Up-front Fees of 0.20% & 0.5% paid to Life Insurance Corporation of India and the United Bank of India respectively while calculating the Weighted Average Rate of Interest.

3. The Appellant/NTPC Ltd. is a Government of India Undertaking and a Company incorporated under the provisions of the Companies Act, 1956 NTPC and is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. The Appellant, being a generating company owned and controlled by the Central Government, is covered under Section 79(1)(a) of the Electricity Act, 2003. The generation and sale of power by the Appellant is regulated under the provisions of the Electricity Act, 2003 by the Central Commission, the Respondent No. 20 herein.

4. The Respondent Nos. 1 to 19 are either the distribution licensees or the power traders in various parts of the country.

5. The Farraka Super Thermal Power Station having capacity of 1600 MW comprising of 5 units and date of commercial operation of the said units are as under:

Unit-I	01.11.1986
Unit-II	01.10.1987
Unit-III	01.09.1988
Unit-IV	01.07.1996
Unit-V	01.04.1995

Unit-I of the said station completed useful of 25 years in 2012-2013 and Unit-II in 2013-14.

6. We have heard Mr. M.G. Ramachandran, learned Counsel for the Appellant/petitioner, Mr. Saurabh Mishra, learned counsel for the Respondent No.1, Mr. R.B. Sharma, learned counsel for the Respondent

Nos. 2, 4 & 16, Mr. S. Vallinayagam, learned counsel for the Respondent No. 7, Mr. Pradeep Misra, learned counsel for the Respondent No. 9 and Mr. Alok Shankar, learned counsel for the Respondent No. 18. We have deeply gone through the material available on record including the impugned order passed by the Central Commission.

7. The following issues arise for our consideration in this Appeal:

(A) Whether the State Commission is justified in disallowing the capital expenditure incurred on raising of Ash Dyke amounting to Rs. 498.28 lakhs, as against the Rs. 966.71 lakhs claimed on the ground that the said part of the expenditure relating to stage-I of the Station is covered by Special Allowance?

(B) Whether the State Commission is justified in disallowing the capital expenditure incurred on extension of Plant Boundary amounting to Rs. 13.31 lakhs on the ground that the necessary justifications have not been given and that the expenditure is covered under the Compensation Allowance under Regulation 19(e) of the Tariff Regulations, 2009?

(C) Whether the State Commission is justified in not considering the Up-front Fees of 0.20% & 0.5% paid to Life Insurance Corporation of India and the United Bank of India respectively while calculating the Weighted Average Rate of Interest?

ISSUE-WISE CONSIDERATIONS ARE AS FOLLOWS:

8. **Issue (A) : Disallowance of capital expenditure incurred on raising of Ash Dyke:**

8.1 On this issue, the following contentions have been made by the Appellant:

(a) that the learned Central Commission did not consider that the capital expenditure on raising of Ash Dyke having been duly allowed in the main order, dated 14.6.2012, in Petition No. 222 of 2009 determining the tariff for the tariff period 1.4.2009 to 31.3.2014, the said decision on the aspect of allowing the claim ought not to be modified in the True Up exercise;

- (b) that in the order, dated 14.6.2012, the Central Commission had duly allowed the capitalization of the expenditure claimed by the Appellant/petitioner under Regulation 9(2)(iii) of the Tariff Regulations, without any stipulation that the same would be subject to the Station being not eligible for Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009;
- (c) that it is not valid for the Central Commission to hold that the expenditure claimed shall be recoverable from the Special Allowance being availed by Units 1 & 2 of Stage I (3 X 200MW) of the Farakka Station and, therefore, not admissible under Regulation 9(2) of the Tariff Regulations, 2009;
- (d) that, further, the main order, dated 14.6.2012, was passed with the knowledge that Units 1 & 2 would be completing 25 years of useful life in 2012-13 & 2013-14 respectively and these are not subsequent developments necessitating changes in the said order;
- (e) that the learned Central Commission has not considered the various judgment pronounced by this Appellate Tribunal i.e. Karnataka Power Transmission Company Limited vs Karnataka Electricity Regulatory Commission & Ors, judgment, dated 4.12.2007, in Appeal No. 100 of 2007 and North Delhi Power Limited vs Delhi Electricity Regulatory Commission 2007 ELR (APTEL) 193, in the true up proceedings, it is not open to change the methodology or principle already decided by the Central Commission in the main Tariff Order;
- (f) that the Central Commission was bound by the provisions of Regulation 9(2) (iii) of the Tariff Regulations, 2009 on its terms without adding any other qualification or condition. Regulation 9(2)(iii) does not say that the capital expenditure on ash dyke after the cutoff date will be admissible only if during the

relevant tariff period, the Appellant is not entitled to any Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009. In the absence of any such relation being provided between Regulations 9(2)(iii) and Regulation 10(4) of the Tariff Regulations, 2009 it was not open to the Central Commission to treat the admissibility of the claim under the said two clauses of the Tariff Regulations, 2009 as substitutes of each other;

- (g) that the capital expenditure on ash dyke, allowable under Regulation 9(2)(iii) of the Tariff Regulations, 2009 is of the nature which is independent of the expenditure that is allowed for renovation and modernization. The purpose of Regulation 9(2)(iii) of Tariff Regulations, 2009 is to allow the capital expenditure on ash dyke at any point of time after the cutoff date independent of the expenditure on renovation and modernization to extend the life of the power generating unit after the initial 25 years. It is improper to decide on the admissibility of capital expenditure if it is incurred at any time till 23 years or after 27 years but not during the period when the plant is under renovation and modernization. Hence, the said approach of the Central Commission is without any rational or logic;
- (h) that the capital expenditure on Raising of Ash Dyke is not a part of the Renovation and Modernization of the Generating Station/Unit but are independent of the same. The capital expenditure on Ash Dyke is in the nature of creation of new asset/ augmentation and cannot be termed as Renovation & Modernization. The expenditure on Ash Dyke raising works and associated infrastructure needs to be considered under Regulation 9 (2) (iii), namely, deferred works relating to Ash Pond or Ash Handling System. Such raising of Ash Dyke is required for handling ash emanating from the generating

station and is not on account of Renovation and Modernization of the generation assets;

- (i) that the National Perspective Plan notified by the Central Electricity Authority (CEA) dealing with renovation, modernization and life extension of thermal power stations (valid up to 2016-17) provide as under:

“7.2 The cost of Life Extension & Upgradation works shall not exceed 50% of the EPC cost of a new generating unit of indigenous origin (BHEL). If the LE&U works is limited to BTG, the cost ceiling shall be restricted to 50% of the new BTG unit only.....”

- (j) that the special allowance allowed by the Central Commission in lieu of the Renovation & Modernization, namely an amount of Rs 7.5 lakh/ MW/ year is not sufficient to meet the expenditure required for the Boiler Turbine Generator (BTG) works. In case of the recently commissioned station of Rihand St-III (2x500 MW) of NTPC, the Boiler Turbine Generator (BTG) cost works out to approximately Rs 2.4 to 2.7 Crore/ MW and 50% of the same amounts to Rs 1.20 to Rs 1.35 crore/MW. Therefore, the plan envisages allowance of Rs 1.20 to 1.35 crore/MW towards Renovation & Modernization of Boiler Turbine Generator (BTG) alone. Even assuming Renovation & Modernization of Boiler Turbine Generator (BTG) results in a life extension of 10 years, the meagre Special Allowance of Rs 1.00 crore/MW does not even compensate for the Rs 1.20 crore to 1.35 crore/MW required for the BTG works alone. Therefore, other works like Raising of Ash dyke etc. cannot be linked to the Special Allowance allowed to a generating station as Rs 1 crore/ MW accruing over 10 years is lesser than Rs 1.20 to 1.35 crore/MW i.e. 50% of Renovation & Modernization of Boiler Turbine Generator (BTG) works alone;

- (k) that the Central Commission has not considered that the said Asset was capitalized during FY 2010-11 i.e. before Units 1 & 2 of the Farakka Station completed the requisite 25 years for availing the Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009. The Units 1 & 2 of the Farakka Station completed 25 years in 2012-13 and 2013-14 respectively and the asset (Ash Dyke Raising) was capitalized in 2010-11. Accordingly, the expenditure for the said assets cannot be said to be covered by the Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009;
- (l) that, further, the Central Commission erred in holding that the actual expenditure of Rs 498.28 Lakhs claimed in respect of the Ash Dyke Raising for Stage-I (3x200 MW) shall be covered under the Special Allowance being availed by Units 1 & 2 of the Farakka Station. The Central Commission has not taken into consideration that Stage-I of the Farakka Station comprises of 3 units of 200MW capacity each and Unit 3 is yet to complete the requisite 25 years for availing Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009. It is, therefore, not open for the Central Commission to hold that expenditure claimed by NTPC in respect of Ash Dyke Raising for Stage-I shall be entirely recoverable from Special Allowance;
- (m) that this Appellate Tribunal, vide its judgment, dated 12.5.2015, in Appeal No. 129 of 2012 & batch, in the case of NTPC Limited vs Central Electricity Regulatory Commission & Ors, had considered a similar matter but, the facts of the present case are distinguishable, which was the subject matter of the Appeal No. 129 of 2012. In the said case, the assets had not been allowed to be capitalized in the main tariff Order;

8.2 **Per contra**, Mr. Pradeep Misra, learned counsel for the Respondent No.9/UPPCL has argued as under:

- (a) that The main aim and object of Electricity Act, 2003 is that the tariff should be cheapest at the consumer end and the generator should get cost of electricity in reasonable manner which has been enshrined in Section 61(d) of the said Act
- (b) that the tariff comprises of several components and one of the component cannot be revised unless and until it is shown that due return is not received by the generator. The Appellant has failed to show that they are unable to receive the Return-on-Equity as specified in the Regulation, hence additional capitalization which will enhance the tariff should not be allowed;
- (c) that after the useful life of a generating station, the Appellant has opted for special allowance under Regulation 10(4) of Tariff Regulations, 2009;
- (d) that the Appellant had been allowed Rs.3,679.98 lakhs as special allowance in respect of Unit-I & II during 2012-14;
- (e) that as useful life of two units of Stage-I had expired during the tariff period, the Central Commission rightly disallowed capitalization of Rs. 498.25 lakhs during 2010-11 and stated that the same can be met from special allowance;
- (f) that in reply to the contention of the Appellant that in true up proceedings the original order cannot be varied, since the Central Commission has found that as the useful life of Unit-I & II has expired during 2012-13 and 2013-14 respectively during the tariff period, this expenditure could be met from special allowance;

- (g) that the contention of the Appellant that the renovation and modernization of Unit-I & II would be in the range of Rs. 1.20 to 1.35 crores/MW for boiler turbine generator and the special allowance would not be sufficient for this purpose, the Central Commission had allowed the special allowance on the basis of details submitted by the Appellant at the time of framing of Regulations. It is settled law that if norms were fixed for any work in the Regulation, subsequently, actuals cannot be claimed as the entire tariff of Appellant is determined on the basis of normative values.

8.3 In addition to the aforesaid contentions of the Respondent No.9/UPPCL, Mr. S. Vallinayagam, learned counsel for the Respondent No.7/TANGEDCO has raised the following contentions:

- (a) that Regulation 6(1) of CERC (Terms and Conditions of Tariff) Regulations, 2009 (in short, 'Tariff Regulations, 2009') provides as follows:

“The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred upto 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.”

- (b) that the Central Commission had awarded the tariff strictly as per the above Regulation and there is no ground for the appellant to challenge the well-reasoned tariff order of the Central Commission;
- (c) that the Appellant, by way of filing Petition No. 222/2009, had claimed the special allowance in respect of Unit-I & II of the Farakka Station from the date of completion of 25 years of useful life as provided under Regulation 10(4) of Tariff Regulations, 2009. The learned Central Commission had determined generation tariff for the period 2009-14 based on

the projections furnished by the by the Appellant/NTPC, vide its order, dated 14.6.2012. In the order, dated 14.6.2012, the learned Central Commission while determining the generation tariff in respect of Stage-I & II of Farakka Station (stage-I &II) for the period 2009-14 based on the projections furnished by the Appellant/NTPC had admitted the special allowance claimed by the Appellant/NTPC;

- (d) that the Appellant in Petition No. 222 of 2009 claiming Rs.966.71 lakhs for the year 2010-11 towards raising of ash dyke lagoon and had also claimed special allowance for Unit-I from the year 2012-13 and for Unit-II for the year 2013-14;
- (e) that the Appellant, in Petition No.222 of 2009, stated that the expenditure claimed under the head “Additional Capital Expenditure” towards the deferred works relating to ash pond or ash handling system were under approved scheme in the original scope of work. The learned Central Commission having considered the same, allowed the additional capital expenditure of Rs.971 lakhs for the FY 2010-11;
- (f) that any expenditure to be incurred for the purpose of extension of life beyond the useful life of the unit/generating station is in the nature of Renovation and Modernisation. The expenditure on ash dyke raising works cannot be considered as a new expenditure for inclusion in the additional capital expenditure. Since, the ash dyke is already existing and the raising works were carried out to store the ash collected, which is in the nature of extension of life, hence, is covered under special allowance in lieu of Renovation and Modernization expense;
- (g) that any expenditure which does not increase efficiency and does not give benefit on the long run cannot be termed as additional capital expenditure. In order to meet out such type of

expenditures, which is essentially needed to run the unit/station, the Central Commission, vide Regulation 10(4) of the Tariff Regulations, 2009, has allowed special allowance. Hence, the Appellant's contention that Special Allowance cannot be extended to cover anything other than replacement of the plant and machinery is not tenable;

- (h) that the extract of National perspective plan for the period 2016-17 submitted by the Appellant discloses that the same is applicable for the tariff block 2014-19, hence, is not relevant because the Petition No.222 of 2009 and 233/GT/2014 were filed by the Appellant for determination of tariff and for revision of tariff in respect of Farakka Station which were for the tariff block 2009-14.

8.4 **Our consideration on Issue (A):**

- 8.4.1 We have cited above the rival contentions raised by the parties on this issue. Without feeling any need to reiterate the same, we proceed towards our discussion and conclusion on this issue, being issue (A), relating to disallowance of capital expenditure incurred on raising of Ash Dyke.
- 8.4.2 As stated above, the learned Central Commission, by the impugned order, has disallowed the capital expenditure incurred on raising of Ash Dyke amounting to Rs. 498.28 lakhs, as against Rs. 966.71 lakhs on the ground that the said part of the expenditure relating to stage-I of the Farakka Station is covered by Special Allowance provided under Regulation 10(4) of the Tariff Regulations, 2009.
- 8.4.3 The main contention of the Appellant on this issue is that the Appellant filed Petition No. 222 of 2009 and claimed the special allowance in respect of Unit-I & Unit-II of Farakka Station from

the date of completion of 25 years of service as provided under Regulation 10(4) of Tariff Regulations, 2009, which was admitted by the Central Commission, vide its order, dated 14.6.2012, when the Central Commission was determining the generation tariff in respect of State-I & II of the Farakka Station for the period 2009-14 based on the projection furnished by the Appellant/petitioner. The learned Central Commission, vide order, dated 14.6.2012, had admitted that special allowance claimed by the Appellant for the Unit I & II of the Farakka Station. Hence, now, it was not open to the Central Commission to disallow the said claim of the capital expenditure incurred on raising of Ash Dyke on the ground that the said part of the expenditure relating to State I of the Station is covered by special allowance under Regulation 10(4) of the Tariff Regulations, 2009. Hence, the said decision on the aspect of allowing the claim ought not to be modified in the True Up exercise.

- 8.4.4 It is undisputed fact that the impugned order has been passed by the Central Commission on the true up petition filed by the Appellant/petitioner.
- 8.4.5 One more contention of the Appellant is that in its order, dated 14.6.2012, the Central Commission had duly allowed the capitalization of the expenditure claimed by the Appellant/petitioner under Regulation 9(2)(iii) of the Tariff Regulations, 2009 dealing with Ash Pond or Ash Handling System in the original scope of work without any stipulation that the same would be subject to the Station being not eligible for Special Allowance. Hence, it is improper on the part of the Central Commission to hold that the expenditure claimed shall be recoverable from the special allowance being availed by Unit-I & II of the Farakka Station and, therefore, not admissible under Regulation 9(2)(iii) of the Tariff Regulations, 2009. The main

order, dated 14.6.2012, was passed by the Central Commission having knowledge that Units 1 & 2 would be completing 25 years of useful life in 2012-13 & 2013-14 respectively and these are not subsequent developments necessitating changes in the said order.

8.4.6 According to the Appellant, the capital expenditure on raising of Ash Dyke is not a part of the Renovation and Modernization of the generating station /unit and the capital expenditure on Ash Dyke is in the nature of creation of new asset/augmentation and cannot be termed as Renovation & Modernization. The expenditure on Ash Dyke raising works and associated infrastructure needs to be considered under Regulation 9 (2) (iii), because it is required for handling ash emanating from the generating station, which is not on account of Renovation and Modernization of the generation assets.

8.4.7 We are unable to accept the above contentions of the Appellant as they are without merits. Since, after the useful life of the generating station, the Appellant had opted for special allowance under Regulation 10(4) of Tariff Regulations, 2009 and the Appellant had been allowed Rs. 3,679.98 lakhs as special allowance in respect of Unit-I & II of the Farakka Station during 2012-14. Admittedly, the useful life of two units of Stage-I has expired during the tariff period, hence, the Central Commission appears to have rightly disallowed capitalization of Rs. 498.25 lakhs during 2010-11 having observed that the same could be met from special allowance. The Central Commission adopted the view that the useful life of Unit-I & II has expired during 2012-13 and 2013-14 respectively during the tariff period, this expenditure can be met from special allowance, which had already been opted and allowed to the Appellant by the Central Commission.

8.4.8 We do not find any merit in the contention of the Appellant that the Renovation and Modernization of Unit-I & II are in the range

of Rs. 1.20 to 1.35 crores/MW for boiler turbine generator and the special allowance is not sufficient for this purpose. Since, the Central Commission had allowed the special allowance on the basis of details furnished by the Appellant at the time of framing of Regulations and once the norms were fixed for any work in the Regulation, subsequently, actuals cannot be claimed as the entire tariff of Appellant is determined on the basis of normative values.

8.5 In view of the above discussion, this issue, being Issue (A), regarding Disallowance of capital expenditure incurred on raising of Ash Dyke, is decided against the Appellant.

9. Issue (B): Disallowance of capital expenditure incurred on extension of Plant Boundary:

9.1 On this issue, the following contentions have been made by the Appellant:

- (a) that the learned Central Commission has not allowed the capital expenditure incurred towards extension of plant boundary amounting to Rs 13.31 Lakhs on the ground that Appellant is belatedly seeking the capitalization of such expenditure without any justification holding that such expenditure shall be met from the compensation allowance under Regulation 19(e) of the Tariff Regulation, 2009;
- (b) that the Central Commission has not considered the detailed justifications regarding expenditure incurred in 2010-11 on the extension of the boundary wall in order to cover the Merry Go Round (MGR) System in its affidavit, dated 28.10.2013. The Affidavit clearly stated that during the course of the Security Review in 2004 and 2007, the Intelligence Bureau had identified the MGR Track as vulnerable from the security point of view (being 20 kms from the Bangladesh Border). At that time, however, there was no need to extend the boundary wall

as the MGR track was within the existing Boundary. It was only in 2010-11, when the Wagon Tippler package was being implemented, it was found that it would not be possible to accommodate some of the assets/facilities of the Wagon Tippler Package within the existing boundary. In pursuance of the same, NTPC extended the boundary wall, as necessitated by the implementation of the Wagon Tippler Package. Hence, there has been no delay on the part of NTPC. NTPC extended the boundary wall, as and when its was required;

- (c) that, further, such expenditure incurred on extension of plant boundary wall is covered under Regulation 9(2)(ii) dealing with change in law of Tariff Regulations, 2009 and the compensation allowances allowed under Regulation 19(e) of the Tariff Regulations, 2009 is in the context of minor assets and like nature does not deal with additional capitalization as in the present case, namely, having a direct bearing on the safety and security of the Plant.

9.2 **Per contra**, the following contentions have been made on behalf of the Respondents on this issue:

- (a) that as the amount was meagre, hence, the Central Commission has rightly observed that the Appellant can meet this amount from Compensation Allowance granted under Regulation 19(e) of Tariff Regulations, 2009;
- (b) that the Appellant has been allowed capitalization of Wagon Tippler, associated conveying system and procurement of three nos. of Loco, Lift, Pump etc. vide order, dated 14.6.2012. Thus, the contention of the Appellant that the Appellant was not aware of the safety measures for implementation of the works is without any substance and has been rightly rejected by the Central Commission;

- (c) that the Hon'ble Supreme Court in UPPCL Vs. NTPC Ltd. & Ors. reported in 2009 (6) SCC 235 has held that belated claim cannot be maintained before CERC. The relevant Para 50 and 52 of the said judgment is reproduced herein below:

“50. Framing of tariff is made in several stages. The generating companies get enough opportunity not only at the stage of making of tariff but may be at a later stage also to put forth its case including the amount it has to spend on operation and maintenance expenses as also escalation at the rate of 10% in each of the base year. It cannot, in our opinion, be permitted to re-agitate the said question after passing of many stage. Furthermore, the direction of the tribunal that the additional costs may be absorbed in the new tariff, in our opinion, was not correct. Some persons who are consumers during the tariff year in question may not continue to be the consumers of the Appellant. Some new consumers might have come in. There is no reason as to why they should bear the brunt. Such quick-fix attitude, in our opinion, is not contemplated as framing of forthcoming tariff was put subject to fresh regulations and not the old regulations.

52. We, therefore, on the aforementioned ground alone are of the opinion that it was not a fit case where the appellate tribunal should have interfered with the order of the Central Commission.”

- (d) that the expenditure amounting to Rs.13.31 lakhs towards the plant boundary claimed by the Appellant does not fall under change in law. Further, the Appellant has not furnished any specific notification from the Government in this regard. The claim made by the Appellant is after a period of 4 years from the year of inspection carried out by Intelligence Bureau, in this regard, the Appellant has not furnished the reasons for delayed claim and the said the claim of the Appellant for inclusion of the expenditure of Rs.13.31 lakhs is unjustified. The Tariff Regulations provide for meeting such expenditures of minor nature from the compensation allowance under Regulation 19(e) of the Tariff Regulations, 2009.

9.3 **Our consideration on Issue (B):**

9.3.1 According to the learned counsel for the Appellant itself, the completion of boundary wall took two years after Intelligence Bureau asked the Appellant to strengthen the security and extend the boundary wall.

9.3.2 During the arguments before us in this Appeal, the learned counsel for the Appellant could not explain the delay of 4 years which was taken from the year of inspection carried out by the Intelligence Bureau. The Appellant has not furnished the reasons for such delayed claim. After considering the facts and circumstances of the matter and going through the material on record, we are, certainly, of the view that the work of completion of boundary wall, highly belatedly, does not fall under the change in law provided under Regulation 9(2) of the Tariff Regulations, 2009. The Appellant could not furnish the solid and cogent reason for such delayed claim of extension of boundary wall. Since, this was meager amount of Rs.13.31 lakhs incurred towards extension of plant boundary carried out by the Appellant, the learned Central Commission appears to be right in disallowing the capital expenditure incurred on extension of Plant Boundary on the ground that such expenditure shall be met from the compensation allowance under Regulation 19(e) of the Tariff Regulations, 2009.

9.4 In view of the above discussion, we do not find any perversity or infirmity in the findings recorded in the impugned order. **Accordingly, this issue, being Issue (B), regarding Disallowance of capital expenditure incurred on extension of Plant Boundary, is also decided against the Appellant.**

10. **Issue (C): Calculation of Weighted Average Rate of Interest:**

10.1 On this issue, the contention of the Appellant is that while calculating the Weighted Average Rate of Interest, the learned Central Commission did not take into consideration the relevant information provided by NTPC in the Petition as regards the increase in the cost of servicing of loan from Life Insurance Corporation of India and the United Bank of India on account of the payment of an upfront fee of 0.20% & 0.50% respectively. The up-front fee is a part of the Financing Charges incurred by NTPC and forms a part of the legitimate cost and has to necessarily be serviced through tariff. Moreover, this expenditure is not covered under O&M Expenses and if not allowed will remain un-serviced over the life of asset.

10.2 **Per contra**, the following contentions have been made on behalf of the Respondents on this issue:

- (a) that the interest on loan capital has to be awarded as per Regulation 16 Tariff Regulations, 2009;
- (b) that the Central Commission has already taken a conscious decision by not allowing Up-front Fees, vide order, dated 19.6.2013, in Review Petition No. 24 of 2012 in the main Tariff Petition No. 222 of 2009. Since, the Appellant had not raised this issue in Appeal No. 193 of 2013 filed against the main tariff order, dated 14.6.2012, the same issue cannot be raised in the present true-up proceedings.

10.3 **Our consideration on Issue (C):**

After going through the rival contention of the parties on this issue, we agree to the contention of the Respondents that since the Appellant had not raised this issue in Appeal No. 193 of 2013, which was filed by the Appellant against the main tariff order, dated 14.6.2012, the same issue cannot be raised in the present true-up proceedings. **Hence, this issue,**

being Issue (C), regarding Calculation of Weighted Average Rate of Interest, is also decided against the Appellant.

11. Since, all the three issues have been decided against the Appellant, the instant Appeal, being Appeal No. 46 of 2015, is liable to be dismissed.

ORDER

12. The present Appeal, being Appeal No. 46 of 2015, is hereby dismissed being without merits and the impugned Order, dated 12.11.2014, passed by the Central Electricity Regulatory Commission, in Petition No. 233/GT/2013, is hereby affirmed. There is no order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 04th DAY OF JULY, 2016.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ **REPORTABLE/NON-REPORTABLE**

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